



# PUBLIC NOTICE

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## THE WIRELESS TELECOMMUNICATIONS BUREAU AND THE WIRESLINE COMPETITION BUREAU PROPOSE TO RELEASE FORM 477 4G LTE MOBILE SPEED DATA TO FACILITATE IMPLEMENTATION OF MOBILITY FUND II SUPPORT

**WT Docket No. 17-80**  
**WC Docket No. 10-90**  
**WT Docket No. 10-208**  
**WC Docket No. 11-10**

In the *Mobility Fund II R&O and FNPRM*, the Commission affirmed that it sought to promote the deployment of 4G LTE in all areas where it would not be offered by the private sector in the absence of universal service support.<sup>1</sup> To identify those geographical areas potentially eligible for such support, the Commission decided to use 4G LTE deployment at a minimum advertised download speed benchmark of at least 5 Mbps, based on service providers' Form 477 filings.<sup>2</sup> The Commission concluded that any census block not fully covered by unsubsidized 4G LTE of at least 5 Mbps advertised download speed will encompass areas that are eligible for support in the Mobility Fund II auction.<sup>3</sup> While the Commission directed the Wireless Telecommunications Bureau (WTB) and the Wireline Competition Bureau (WCB) to make an initial determination of eligible areas by census block based on the Form 477 filings, it also stated its intention to "provide a robust process for interested parties to challenge our list of presumptively eligible areas for MF-II support."<sup>4</sup>

To aid interested parties, and to provide additional information about the geographical areas eligible for Mobility Fund II support, we propose to release minimum advertised or expected 4G LTE speed data included in the December 31, 2015, and June 30, 2016 Form 477 filings (and any subsequent Form 477 filings) to facilitate Mobility Fund II analysis.<sup>5</sup> Disclosure of the minimum advertised or expected speeds associated with service providers' 4G LTE coverage submitted in their Form 477 filings will enable a transparent process for challenges,<sup>6</sup> and final determinations of areas eligible for Mobility Fund II support. Strong public interest benefits support disclosing the minimum advertised or expected

<sup>1</sup> *Connect America Fund; Universal Service Reform – Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, FCC 17-11 at 22, para. 51 (Mar. 7, 2017) (*Mobility Fund II R&O and FNPRM*).

<sup>2</sup> *Mobility Fund II R&O and FNPRM* at 22, 24, paras. 51, 56.

<sup>3</sup> *Mobility Fund II R&O and FNPRM* at 23, para. 52.

<sup>4</sup> *Mobility Fund II R&O and FNPRM* at 30, para. 66.

<sup>5</sup> For the Form 477 data filed, if a service provider does not advertise minimum speeds, it must indicate the minimum speeds "that users should expect to receive." FCC Form 477, Local Telephone Competition and Broadband Reporting, Instructions at 24 (2016) (FCC Form 477 Instructions), <https://transition.fcc.gov/form477/477inst.pdf>.

<sup>6</sup> *Mobility Fund II R&O and FNPRM* at 86-87, paras. 232-33.

4G LTE speeds.<sup>7</sup> Making these data available to the public will provide service providers, states, and experts with the opportunity to review and evaluate the data independently to ensure the accuracy of the information. Further, with respect to minimum advertised speeds, because it is advertised by service providers, much or all of that information is already available to the public. The public interest in providing such speed information would substantially outweigh any potential competitive harms to the providers in maintaining its confidentiality.<sup>8</sup>

In the *Modernizing Form 477 Order*, the Commission noted that while deployment data generally will be treated as public, certain specific speed and spectrum parameters included in mobile deployment data may be used by providers for internal network planning purposes.<sup>9</sup> Accordingly, the Commission provided that “[f]ilers may request confidential treatment of those specific elements of their deployment data.”<sup>10</sup> In implementing the requirements of the *Modernizing Form 477 Order*, Section 5.8 of the Form 477 Instructions requires facilities-based providers of mobile wireless broadband connections to submit polygons in a shapefile format representing geographic coverage nationwide for each specified mobile broadband transmission technology (e.g., LTE) deployed in each frequency band.<sup>11</sup> If a Form 477 filer wished to request non-disclosure of “some or all of the terrestrial mobile wireless deployment spectrum and speed parameters information” in its submission, it was directed to check a single non-disclosure check box.<sup>12</sup>

Because of the streamlined check box approach on Form 477, filers have not been required to include with their filings a statement of the reasons underlying their request for withholding the materials pursuant to Section 0.459(b) of the Commission’s rules.<sup>13</sup> Accordingly, we will afford these filers an opportunity to provide any such reasons, and state why their individual circumstances warrant withholding the aforementioned data from disclosure. Affected parties must oppose disclosure of their aforementioned Form 477 4G LTE speed data and provide a full justification in support of their request for confidentiality under Section 0.459(b) no later than April 12, 2017.<sup>14</sup> All filings should refer to WT Docket No. 17-80.

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<sup>7</sup> We do not propose to disclose the speed data associated with the specific spectrum bands that providers are using to provide mobile LTE broadband service, as such data do not appear to be necessary for implementation of Mobility Fund II. *Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10, Report and Order, 28 FCC Rcd 9887, 9923, paras. 82-83 (2013) (*Modernizing Form 477 Order*); *Wireline Competition Bureau Releases Data Specification for Form 477 Data Collection*, WC Docket No. 11-10, Public Notice, 28 FCC Rcd 12665, 12671 (WCB 2013) (*Data Specification for Form 477 Public Notice*).

<sup>8</sup> Form 477 requires mobile broadband service providers to submit certain information related to mobile broadband deployment and subscriptions. *Modernizing Form 477 Order*, 28 FCC Rcd at 9908-09, para. 42; *Data Specification for Form 477 Public Notice*, 28 FCC Rcd at 12671.

<sup>9</sup> *Modernizing Form 477 Order*, 28 FCC Rcd at 9923, paras. 82-83.

<sup>10</sup> *Modernizing Form 477 Order*, 28 FCC Rcd at 9923, para. 82; *see also* 47 CFR § 1.7001(d)(2)(ii); FCC Form 477 Instructions at 32.

<sup>11</sup> FCC Form 477 Instructions at 24.

<sup>12</sup> FCC Form 477 Instructions at 16; *see also Data Specification for Form 477 Public Notice*, 28 FCC Rcd at 12668. The filer was not able to specify whether it was requesting confidential treatment of all this information, or only of some of this information.

<sup>13</sup> 47 CFR § 0.459(b).

<sup>14</sup> 47 CFR § 0.459(b). In the case of any request for confidentiality that is subsequently denied, the provider may file an application for review by the Commission in accordance with 47 CFR § 0.459(g). Materials will be accorded confidential treatment until the Commission acts on any timely applications for review, and until a court acts on any timely motion for stay of such an order denying confidential treatment. *Id.*

Under the Commission's current procedures for the submission of filings and other documents,<sup>15</sup> submissions in this matter may be filed electronically through the Commission's Electronic Comment Filing System (ECFS) or by hand delivery to the Commission.

- **To file electronically,**<sup>16</sup> comments shall be sent as an electronic file via the Internet to <http://apps.fcc.gov/ecfs>. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by email.
- **To file by paper,** the original and four copies of each filing must be filed by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., S.W., Room TW-A325, Washington, D.C. 20554. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

One copy of each pleading must be delivered electronically, by email or facsimile, or if delivered as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings), to: Matt Warner, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau, at [matthew.warner@fcc.gov](mailto:matthew.warner@fcc.gov) or (202) 418-7447 (facsimile).

This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>17</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b).

In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

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<sup>15</sup> *FCC Announces Change in Filing Location for Paper Documents*, Public Notice, 24 FCC Rcd 14312 (2009).

<sup>16</sup> *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

<sup>17</sup> 47 CFR §§ 1.1200(a), 1.1206.

This action is taken pursuant to Sections 4(i) of the Communications Act, 47 U.S.C. § 154(i), Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under section 0.331 of the Commission's rules, 47 CFR § 0.331, and is effective upon its adoption.

For further information, contact Kate Matraves, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau, at (202) 391-6272 or Matt Warner, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau, at (202) 418-2419.

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